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FEDERAL TRADE COMMISSION
Agency Information Collection Activities;
Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (“Commission” or “FTC”).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (“OMB”) for review, as required by the Paperwork Reduction Act (“PRA”). The FTC is seeking public comments on its proposal to extend for an additional three years the current PRA clearance for information collection requirements in its Telemarketing Sales Rule (“TSR”). That clearance expires on August 31, 2016.

DATES: Comments must be submitted on or before [insert date 30 days from FEDERAL REGISTER date of publication].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Write “TSR PRA Comment, FTC File No. P094400” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/tsrrulepra2> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the proposed information requirements for the TSR should be addressed by mail to Craig Tregillus, Staff Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room CC-8607, 600 Pennsylvania Ave., NW, Washington, DC 20580, or by telephone to (202) 326-2970.

SUPPLEMENTARY INFORMATION: On April 14, 2016, the Commission requested public comment on the information collection requirements and related PRA burden estimates associated with the TSR. 81 FR 22082 (“April 14, 2016 Notice”). Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 et seq., the FTC is providing this second opportunity for public comment while seeking OMB approval to renew clearance for those information collection requirements.

In response to its prior request for public comment, the Commission received ten comments, most of which were either non-germane or not directly responsive to the nature of the public comments sought. As required by the PRA, the Commission had sought public comments specifically on the following:

(1) whether the recordkeeping, disclosure, and reporting requirements are necessary, including whether the resulting information will be practically useful; (2) the accuracy of the FTC’s burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

None of the public comments directly addressed the above and, lacking independent reason thus far to revise its burden estimates, the FTC will submit for OMB review,

contemporaneous with this published Notice, its previously published burden estimates on the TSR's disclosure, recordkeeping, and reporting requirements. For more details about the Rule requirements, the background behind these information collection provisions, and the FTC's burden estimates and methodology behind them, see the April 14, 2016 Notice.

To clarify for purposes of receiving public comments for this second Notice, the disclosure, recordkeeping, and reporting requirements for which the Commission sought public comment concern such requirements imposed upon telemarketers and/or other sellers who are subject to, and not otherwise exempted under, the TSR. Some types of businesses are not covered by the TSR even though they conduct telemarketing campaigns that may involve some interstate telephone calls to sell goods or services. These three types of entities are not subject to the FTC's jurisdiction, and not covered by the TSR:

- banks, federal credit unions, and federal savings and loans
- common carriers — such as long-distance telephone companies and airlines — when they are engaging in common carrier activity
- non-profit organizations — those entities that are not organized to carry on business for their own, or their members,' profit.

The above types of entities are not covered by the TSR because they are specifically exempt from the FTC's jurisdiction. Nevertheless, any other for profit individual or company that contracts with one of these three types of entities to provide telemarketing services must comply with the TSR. Moreover, some types of calls also are not covered by the TSR, regardless of whether the entity making or receiving the call is covered. These include:

- unsolicited calls from consumers

- calls placed by consumers in response to a catalog
- business-to-business calls that do not involve retail sales of nondurable office or cleaning supplies
- calls made in response to general media advertising (with some important exceptions)
- calls made in response to direct mail advertising (with some important exceptions)
- Political campaign calls protected by the First Amendment.

Public comments on the April 14, 2016 Notice ranged from a complaint about receiving repeated unsolicited “junk” telefaxes – to a complaint that the FTC fails to enforce the TSR — to a suggestion that the FTC consider ways to pro-actively thwart unsolicited calls to mobile phones in a vein similar to which “NoMoRobo” (<http://www.nomorobo.com>) blocks some unwanted robocalls (to date, Nomorobo works only with some landline carriers, and not with cell phones) – to a suggestion, more generally, “that better automation [be devised] in addressing the illegal calling issue.”

In response, the FTC notes that Federal Communication Commission rules, not the FTC’s TSR, address “junk” telefaxes. (See <https://www.fcc.gov/stop-unwanted-calls>.) To date, the FTC has brought at least 105 enforcement actions against companies and telemarketers for Do Not Call, abandoned call, robocall (i.e., automated dialing technology to make calls that deliver prerecorded messages), and Registry violations (<https://www.ftc.gov/news-events/media-resources/do-not-call-registry/enforcement>). A variety of new technologies has increased the number of illegal telemarketing calls made to telephone numbers on the Registry. The net effect of these new technologies is that individuals and companies who do not care about complying with the Registry or other telemarketing laws are able to make more illegal telemarketing calls

cheaply and in a manner that makes it difficult for the FTC and other law enforcement agencies to find them. The FTC continues to solicit ideas and assistance to combat illegal automated calls: <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-announces-new-robocall-contests-combat-illegal-automated>. Moreover, the FTC in tandem with other law enforcement agencies continues to bring actions against illegal telemarketing calls: <https://www.ftc.gov/news-events/media-resources/do-not-call-registry/robocalls>. The FTC also continues to track how technology affects the Registry and the consumers and telemarketers who access it.

To reiterate, pursuant to its obligations under the PRA, the FTC seeks public comment on the necessity of its TSR recordkeeping, disclosure, and reporting requirements, whether the information resulting from those requirements will be practically useful, the accuracy of the FTC's associated PRA burden estimates, and how to improve the quality, utility, and clarity of the TSR's disclosure requirements while also minimizing the burden on affected entities to provide the required information to consumers.

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [insert date 30 days from FEDERAL REGISTER date of publication]. Write "TSR PRA Comment, FTC File No. P094400" on your comment. Your comment – including your name and your state - will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential" as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/tsrrulepra2>, by following the instructions on the web-based form. When this Notice appears at <http://www.regulations.gov/#!home>, you also may file

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the

a comment through that Website.

If you file your comment on paper, write “TSR PRA Comment, FTC File No. P094400” on your comment and on the envelope, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [insert date 30 days from FEDERAL REGISTER date of publication]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <http://www.ftc.gov/ftc/privacy.htm>.

Comments on the recordkeeping, disclosure, and reporting requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5806.

comment to be withheld from the public record.⁷ See FTC Rule 4.9(c), 16 CFR 4.9(c).

David C. Shonka

Acting General Counsel.

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